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Paper No. 5

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MAY 28 2002

In re Application of : **OFFICE OF PETITIONS**
Walster et al. :
Application No. 10/042,883 :
Filed: January 8, 2002 : **DECISION ON PETITION**
Attorney Docket No. SUN-P6432-SPL :
:

This is a decision on the petition filed February 13, 2002, and supplemented May 7, 2002, to establish that Figures 7A, 7B, 7C, and 7D were part of the originally filed application.

On January 8, 2002, the application was filed.

On February 6, 2002, the Office of Initial Patent Examination mailed a "Notice to File Corrected Application Papers" stating that the application had been accorded a filing date of January 8, 2002, and advising applicants that Figures 7A, 7B, 7C, and 7D described in the specification appeared to have been omitted.

In response, the present petition was filed alleging that the missing figures were deposited on January 8, 2002. In support, petitioner has submitted a postcard receipt which acknowledges receipt of "Drawings: 8 pages" on January 8, 2002.¹ Petitioner has also submitted a copy of the missing documentation- 8 pages of drawings.²

A review of the record indicates that none of the drawings submitted previously by applicant are in the file. The file includes 6 pages of drawings labeled Figures 1-7. However, a review of the drawings indicates that the drawings are from another application and were incorrectly placed in the file jacket for the instant application. The six pages of drawings have been removed and forwarded to the correct application file.

As stated above, the drawings deposited on January 8, 2002, have not been located. However, the evidence is convincing that the application papers deposited on January 8, 2002 included 8 pages of drawings, and that the drawings were subsequently misplaced in the PTO. In view of

¹ Evidence of receipt of any correspondence filed in the Patent and Trademark Office can be obtained by submitting a self addressed post card properly itemizing and identifying the paper or papers being filed. Upon receipt of the correspondence, the Patent and Trademark Office will check the listing on the post card against the papers submitted, making sure that all items listed are present and will then stamp the postcard with an Official date stamp and place the post card in the outgoing mail. "A post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all items listed thereon by the PTO." M.P.E.P. § 503.

² Petitioner has submitted, by facsimile transmission, a copy of the originally filed drawings. The only substantial difference between the original drawings and the drawings submitted on February 13, 2002, is a change in margins. The drawings received on February 13, 2002, will be used during prosecution of the application and the copy of the drawings as originally filed will remain attached to the copy of the original petition.

the above, the petition is **granted**. The copy of the drawings submitted with the petition will be used for examination purposes.

Since petitioner has established the Office misplaced the drawings, the petition fee of \$130 will be credited to petitioner's deposit account.

The Notice mailed February 6, 2002 was sent in error and is hereby vacated.

The Application is being returned to the Office of Initial Patent Examination for further processing with a filing date of January 8, 2002, using the application papers filed on January 8, 2002, and the copy of the 8 pages of drawings filed on February 13, 2002.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.

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